

David Powell, an Attorney at Law, } Appellts. } William Pleydell, Esq; } Respondts.
and Elizabeth his Wife, } and Robert Colepepyr, Gent. }

The Respondent's CASE.

1686. 1st. Account.

IN 1686, upon an Account Stated; John Fletcher, late of Dublin Esq; was indebted unto the Respondent, Pleydell, in the Summ of 832 l. 16 s. 10 d. 1/2. for Securing which, the said Fletcher gave the Respondent Pleydell, a Penal Bill of 1665 l. and the Appellant Powell, the Attorney, is a Witness thereunto.

1692. Judgment.

Fletcher afterwards became further Indebted unto the Respondent Pleydell, in the Summ of 499 l. and gave Bonds for the same: And as a farther Security in 1692, Judgment in the Court of Common Pleas in Ireland, was entered against the said John Fletcher for the Summ of 1665 l.

1693.

And in 1693. The said Fletcher was Indebted unto the Respondent Pleydell in the further Summ of 297 l. 8 s.

1694. Execution.

In July 1694, (the said Fletcher being then Indebted unto the Respondent Pleydell in 1600 l. and upwards) the Houses in Dublin now in Question, of which the said Fletcher was possessed for a Term of Years, were seized by Virtue of an Execution on the said Judgment, and Appraised at 400 l. being the full Value thereof; and the same were sold by the then Sheriffs of Dublin, to the Respondent Colepepyr, in Trust for the Respondent Pleydell for 400 l.

2d. Account in 1694.

Afterwards in the same Year, 1694. the said Fletcher and the Respondent Pleydell came to an Account, in which Account the Respondent Pleydell gave the said Fletcher Credit for the said 400 l. which was allow'd by Fletcher; and upon the Ballance of that Account Stated (after the Allowance of the said 400 l.) there was then due from Fletcher, to the Respondent Pleydell, the Summ of 1222 l. 5 s. 9 d. And in December 1694, the said Fletcher made a Mortgage of Lands in Herefordshire to the Respondent Pleydell, for securing 1100 l. part of the said 1222 l. 5 s. 9 d. And the other 122 l. 5 s. 9 d. was to be paid in a few days; and the Respondent Colepepyr continued quiet in Possession of the Premises in Question, in Trust for Respondent Pleydell, during the Lives of John Fletcher and Elizabeth his Wife.

Decem. 1694. Mortgage for part of Residue of the Debt, after 400 l. paid by Houses.

Fletcher died in 1695, and his Wife in 1696.

1697 Appellants Bill in Chancery.

After Fletcher's Death, the Appellants brought their Bill in Chancery against the Respondents; and Dr. Timothy Woodroffe, the Heir of Fletcher's Widow, to whom Fletcher devised all his Real and Personal Estate; and also Administrator of Fletcher's Widow, and Administrator, de bonis non, &c. of John Fletcher, to have a Specifick Execution of the Agreement following.

I John Fletcher of the City of Dublin, Merchant, do hereby Promise and Engage myself, that I will give unto my Niece, Elizabeth Burton, so many Houses and Lands, in and about the City and Suburbs of the City of Dublin, as do now Amount to the Yearly Value of 60 or 70 l. Sterling, per Annum. the same to come to my said Niece, or the Heirs of her Body, from, and immediately after the Death of me the said John Fletcher, and Elizabeth my now Wife, If we die and leave no Child; otherwise this present Writing to be Void, and of none Effect. And I do farther Promise and Engage, That I will Perfect such Deed or Conveyance of the Premises unto the said Elizabeth Burton (at her Marriage, if it be desired) according to the true Intent and Meaning of these Presents; as Counsel Learned in the Law shall Advise or Devise. In Witness whereof I have hereunto set my Hand and Seal, the 4th day of July, 1677.

JOHN FLETCHER.

1697.

1702. Dismissal.

Respondents brought their Cross-Bill, whereto the Appellants put in four insufficient Answers. The 6th of July last, the Cause was heard before the Present Lord Keeper, as against the Respondents only; and the Appellants Bill was dismiss'd, his Lordship declaring he saw no Reason in Equity to give the Appellants Relief in any of the Matters, for which by their Bill they sought to be Relieved.

Note.

That by the Writing it self, it appears that Fletcher agreed to Convey Free-hold and not Lease-hold Houses and Lands; for the Appellant, Elizabeth's Heirs of her Body, were thereby intended to take after the Death of Fletcher and his Wife, and the Death of Appellant Elizabeth; and the said Fletcher was then Seized of divers Houses and Lands, in and about Dublin, which were Free-hold; Part whereof was sold to the Lord Primate of that Kingdom Twenty Years since; other Part was sold a little before Fletcher's Death, and the Remainder continues yet unfold; and the Premises in Question are all Lease-holds, which will not bear any such Limitation.

Note.

That if Fletcher did intend the Houses in Question, yet this is but a voluntary Agreement; and upon no Consideration either of Money or Blood: The Appellants themselves do not pretend it to be for Money, and there could be none of Blood, for the Appellant Elizabeth was but the Daughter of Fletcher's Wife's Sister.

Note.

The said Agreement is but Executory, and no Demand made of a Specifick Execution of the same, till after the Death of Fletcher and his Wife, who lived almost Twenty Years after the Date of the said Agreement.

Note.

The Appellants themselves offered to deliver up the same Agreement to Fletcher's Wife, to be Cancell'd, about 1694. and she Answered, they might do what they would with it, for it signified nothing. And in her last Sickness, declared she would give them nothing, or to that Effect.

Note.

It fully appears, by the Proofs taken in the Cause, That the Respondent Pleydell is a fair Purchaser, upon a full and valuable Consideration, without any manner of Fraud; and the said Judgment was Confess'd when he was a real Creditor. And at the time of Execution taken out, there was above 1600 l. due to him, and therefore no Trustee for Fletcher; and the rather, for that Fletcher allow'd the said 400 l. upon the last Account, and he (best knowing the value of the Houses in Question) agreed the Respondent Pleydell should hold the same for that Money, as appears by the Account it self, prov'd in the Cause: And the Houses were worth no more than 400 l. at the time the said Execution was Executed.

Note.

The Appellants knew Fletcher was involv'd in Suits in Dublin, and feared the same would go against him; and also of the Respondent Pleydell's Judgment, Execution, and Bill of Sale in Fletcher's life-time; and Appellant David Powell heard Respondent Pleydell require better Security from Fletcher, and Procured and Witnessed the said Mortgage from Fletcher to Respondent Pleydell; yet these Appellants, after the hazard of losing their pretended Right, and the Defiance thereunto bidden by Elizabeth Fletcher in 1694, never Commenced any Suit, nor made any Demand for Confirmation, for near Twenty Years, and till both the Fletchers were Dead.

Wherefore the Respondents hope the said Dismissal of the Complainant's Bill is just and agreeable to the Rules of Equity, and ought to be affirm'd; and that these Respondents shall have their full Costs.

WILLIAM COWPER.